

Robert Routh, Esq.

Staff Attorney

Clean Air Council

135 S. 19th St., Ste. 300

Philadelphia, PA 19103

RE: Freedom of Information Act Request EPA-HQ-2018-001886, Final Response

Dear Mr. Routh:

This letter concerns your above referenced Freedom of Information Act (FOIA) request, received by the Environmental Protection Agency (EPA or Agency) on January 16, 2017. The three-part request sought (1) reports submitted to EPA pursuant to 40 C.F.R. Part 60 Subpart 0000a ("0000a") reporting requirements, (2) copies of correspondence between EPA and external parties containing reference to 0000a and a series of terms, and (3) copies of internal correspondence containing reference to 0000a and a series of terms. On January 29, 2018, you agreed to limit the scope of parts 2 and 3 to correspondence to or from the Office of Enforcement and Compliance Assurance, the Office of the Administrator, or the Office of Air and Radiation, and you clarified the timeframe for the request to be August 2, 2016- November 21, 2017.

Fees and Interim Productions

On February 13, 2018, your request for a fee waiver was granted. There are no fees associated with this request. Interim responses of records were produced on March 5, 2018; March 9, 2018; March 15, 2018; April 10, 2018; May 4, 2018; June 26, 2018; and July 11, 2018. Today, EPA is making a final production of records and closing your request. As described below, some records are withheld in full or in part. Your request is therefore partially granted and partially denied.

Today's Production

Today's production includes records responsive to parts 2 and 3 of your request. There are a total of 27,024 pages. They are compiled in 5 PDFs titled "September Prod pt. [1-5]." You can access them at the link below:

* <https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=EPA-HQ-2018-001886&type=request>

Response to Part 1

In response to part 1 of your request, EPA has produced 5,747 pages and 32 excel spreadsheets with some redaction. EPA has initially withheld approximately 164 records in full under Exemption 4 of the FOIA as they have been claimed as Proprietary Business Information (PBI). The Agency is undergoing a PBI determination in accordance with 40 C.F.R. § 2.204 and § 2.205 to assess whether the information claimed as PBI is properly withheld under Exemption 4. The Office of General Counsel (OGC) will issue a final determination with respect to these records. The tracking number for the PBI case is EPA-2018-009101, and the point of contact for PBI issues is Joan Kaminer, an OGC attorney, who can be reached at 202-564-0334 or Kaminer.joan@epa.gov.

Response to Parts 2 and 3

In total, in response to parts 2 and 3 of your request, EPA has produced 1,208 records in whole or in part. EPA has withheld 929 records in full. The attached index contains a description of the fully withheld records.

FOIA Exemptions

Where information has been redacted, the basis for the withholding is printed above the withheld material. Information has been redacted, or records have been withheld in full, pursuant to FOIA exemptions 4, 5, 6, and 9. Exemption 4 of the FOIA protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. 5 U.S.C. § 552(b)(4). Exemption 5 of the FOIA exempts from disclosure information that would not be available to another party in litigation. § 552(b)(5). This includes information subject to the deliberative process privilege (internal, pre-decisional, and deliberative information which would harm Agency decision making if released), attorney-client privilege (confidential communications between an attorney and client concerning legal advice), and attorney work product privilege (documents prepared by or at the direction of an attorney in anticipation of litigation). Exemption 6 of the FOIA protects personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. § 552(b)(6). Exemption 9 of the FOIA exempts from disclosure geological and geophysical information and data, including maps, concerning wells. § 552(b)(9).

Appeal Information

This letter concludes our response to your request. As noted above, the information withheld under Exemption 4 will be reviewed by OGC, which will issue a final PBI determination. Therefore, you do not need to appeal the withholding of information under Exemption 4. Once OGC issues a final determination, EPA will notify you whether the information qualifies for confidential treatment or may be released.

To the extent you would like to appeal any other issue, including any nonExemption 4 withholdings, you may appeal this response by email at hq.foia@epa.gov, or by mail to the EPA's National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., Room 5315, Washington, DC 20460. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

If you have any questions concerning this response, please contact Peter Bermes of the Office of General Counsel at (312) 886-6631 or bermes.peter@epa.gov.

Sincerely,

Edward J. Messina, Director

Monitoring, Assistance, and Media Programs Division

Office of Compliance